

FEB 17 1979

MICHAEL BODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-915

ALVIN BROUSSARD, PETITIONER

VERSUS

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT

REPLY TO BRIEF OF THE UNITED STATES

W. V. DUNNAM, JR.  
DUNNAM, DUNNAM & DUNNAM  
4125 W. Waco Drive  
Post Office Box 8418  
Waco, Texas 76710

ATTORNEYS FOR PETITIONER  
ALVIN BROUSSARD

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**REPLY TO BRIEF OF THE UNITED STATES**

**TO THE HONORABLE SUPREME COURT OF THE UNITED  
STATES:**

The Government in its brief and the United States Court of Appeals in its opinion have failed to draw the line that actually exists between the Findings of Fact and the Conclusions of Law.

The factual findings are:

(1.) "the testimony of the plea bargain agreement was that the government would not prosecute for any marijuana or amphetamine violations occurring prior to the date of the defendant entering the plea of guilty to the 2-count information." (Par. 6, Findings of Fact; R. 71)

(2.) "the record supports, that counsel for the defendant and the defendant intended the plea bargain agreement would cover all acts of the defendant up to and including the date of his entering a plea of guilty to the information in the Northern District of Texas." (Par. 9, Findings of Fact; R. 72)

Thereafter, the Magistrate made the immaterial findings that there was no specific mention of the Western District of Texas, as was shown by the undisputed evidence, that the United States Attorney did not consult with anyone from the office of the United States Attorney in the Western District nor with anyone from the United States Department of Justice, that the prosecutor in the Northern District was unaware of the investigation pending in the Western District, and that he intended to bind only the Northern District as to subsequent prosecution of Petitioner, and from said facts the Magistrate *concluded as a matter of law that "the prior plea agreement (that was found in par. 6, supra.) was limited to dismissal of the indictment in the Northern District.*

By reason of the agreement factually found in the above paragraphs 6 and 9 of the Findings of Fact, (*U. S. vs. Carter* 454 F. 2d 426 specifically requires dismissal of the indictment herein regardless of the immaterial facts that there was no specific mention of the Western District, that the United States Attorney failed to consult anyone from the Western District nor from the Department of Justice, and that he intended to bind only the Northern District. The attempt of the Government and Court of Appeals to modify said written factual findings of said agreement and defendant's reliance thereon by the Court's mere conclusion that by reason of said additional immaterial facts such agreement was limited to the Northern District of Texas is in direct controvention of this Court's prior holdings that written Findings of Fact cannot be modified or controlled by Conclusions of Law. *Stone v. U. S.* 164 U.S. 380, 17 S.Ct. 71, 41 L.Ed. 477; *U.S. v. Esnault-Pelterie* 57 S.Ct. 159.

Said findings of the agreement in paragraph 6 above was mandatory upon any conscientious trier of fact since U.S. Attorney Ethington, when recalled to the stand after hearing and having his memory refreshed by the unequivocal testimony of attorneys Canonico and Dunnam, admitted that he did not

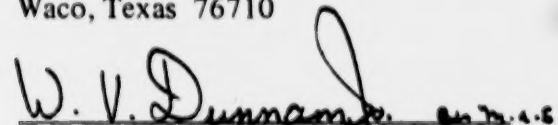
actually remember the words used and that he had admitted over the phone that the testimony Dunnam had just given was substantially correct. (H. Mot. to Dis.) (R. 16 P. 19)

## CONCLUSION

The right of a defendant to rely upon the word of a U.S. Attorney and the honor of the Government are at stake. Do not let them be eroded by a false construction of the Findings of Fact. The Petition for Writ of Certiorari should be granted and Petitioner accordingly so prays.

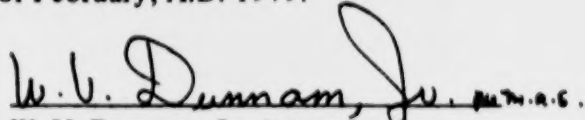
Respectfully submitted:

DUNNAM, DUNNAM & DUNNAM  
4125 W. Waco Drive  
Post Office Box 8418  
Waco, Texas 76710

  
W. V. Dunnam, Jr. Attorneys for  
Alvin Broussard, Petitioner

### CERTIFICATE

I hereby certify that three true copies of the foregoing Reply have been duly mailed to counsel for the United States of America, Honorable Le Roy Morgan Jahn, U.S. Attorney's Office, United States Courthouse, 655 E. Durango Blvd., Suite G-13, San Antonio, Texas 78206, and Solicitor General of the United States, Department of Justice, Washington, D.C. 20530, this 14th day of February, A.D. 1979.

 W. V. Dunnam, Jr. Attorneys for

Alvin Broussard, Petitioner